

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

Jennifer Anderson,

Plaintiff(s),

v.

Civil Action No.

The Fresh Market, Inc.; et al.,

Defendant(s).

NOTICE OF REMOVAL

Defendant The Fresh Market, Inc. removes this action to the United States District Court for the Northern District of Alabama, Southern Division, on the grounds that the proper and real parties in interest are of diverse citizenship and the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. §§ 1332, 1441, and 1446. In support, Defendant submits the following:

1. Plaintiff filed this civil action on August 27, 2020, in the Circuit Court of Jefferson County – Birmingham Division, Alabama. [Exhibit 1 – Complaint (Doc. 2), p. 1] The action was then pending as Jennifer Anderson v. The Fresh Market, Inc., Civil Action Number CV-2020-903036.00 (the “Underlying Suit”). [Exhibit 1 – Complaint (Doc. 2), p. 1]

2. A true and correct copy of all process, pleadings, and orders served upon Defendant in the Underlying Suit before this removal is included within Exhibit 1 attached hereto.

3. Plaintiff alleges claims against Defendant and fictitious defendants for negligence and wantonness. [Exhibit 1 – Complaint (Doc. 2), ¶¶ 1-17] Plaintiff's claims arise, it is alleged, from an August 27, 2018 slip and fall accident occurring on Defendant's premises located at 549 Brookwood Village, Homewood, Alabama. [Exhibit 1 – Complaint (Doc. 2), ¶¶ 6-7] Plaintiff claims to have suffered personal injury and seeks to recover compensatory damages, punitive damages, interest, and costs from Defendant. [Exhibit 1 – Complaint (Doc. 2), ¶ 17 and p. 6]

4. **This Removal is Timely.** According to the Jefferson County Circuit Court – Birmingham Division records, a copy of the summons and complaint was served upon Defendant via certified mail on August 31, 2020. [Exhibit 1 – Alabama SJIS Case Detail, p. 2 and Certified Mail Return Receipt (Doc. 6)] The described service constituted “receipt ... through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.” 28 U.S.C. § 1446 (b)(1). Pursuant to Rule 6(a), Fed. R. Civ. P., Defendant files this Notice of Removal within the required 30 days of such service. 28 U.S.C. § 1446(b)(1).

5. **Complete Diversity of Citizenship Exists Between the Real and Proper Parties.** This Court has jurisdiction pursuant to 28 U.S.C. § 1332, and removal is proper pursuant to 28 U.S.C. § 1441 because there is diversity of citizenship among the real and proper parties in interest:

- a. Plaintiff, as pleaded in the complaint in the Underlying Suit, is “an adult citizen of the State of Alabama, residing in Jefferson County, Alabama.” [Exhibit 1 – Complaint (Doc. 2), ¶ 1]
- b. The complaint pleads Defendant is a “Delaware corporation.” [Exhibit 1 – Complaint (Doc. 2), ¶ 2] Defendant was, in fact, incorporated in the State of Delaware and has its principal office in the State of North Carolina. [Exhibit 2 – Alabama Secretary of State Business Entity Record for The Fresh Market, Inc., p. 1]
- c. For purposes of removal based on diversity of citizenship, “the citizenship of defendants sued under fictitious names shall be disregarded.” 28 U.S.C. § 1441(b)(1).

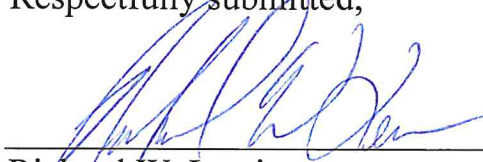
6. **The Amount in Controversy Exceeds \$75,000.** As pleaded in the complaint in the Underlying Suit, Plaintiff seeks to recover damages against Defendant for injuries she suffered as a result of the slip and fall accident and for which she was required (among other things) to undergo three surgeries. [Exhibit 1 – Complaint (Doc. 2), ¶ 17 and pp. 5-6] On August 13, 2020, Plaintiff (via her representative) provided documentation of the charges relative to these surgeries as performed at Grandview Medical Center in Birmingham, Alabama. [Exhibit 3] That information documents (a) \$82,979.00 in total charges for a June 5, 2019 procedure, (b) \$47,965.70 in total charges for a December 26, 2019 procedure, and (c)

\$48,071.30 in total charges for a February 12, 2020 procedure. [Exhibit 3] The total of the charges for these three procedures is \$179,016.00. Thus, without even considering the other damages Plaintiff seeks to recover from Defendant, the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a).

7. **Removal Perfected.** As established above, diversity of citizenship exists between the real and proper parties in this action, and the amount in controversy exceeds \$75,000, exclusive of interest and costs. Accordingly, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, this action is removed to this Honorable Court.

8. **Notice Provided to the State Court.** In accordance with 28 U.S.C. § 1446(d), Defendant has contemporaneously provided the Clerk of the Jefferson County Circuit Court – Birmingham Division with notice of the removal of this action to this Honorable Court.

Respectfully submitted,



Richard W. Lewis
Bar Number: LEW016

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that, on the 29th day of SEPTEMBER, 2020, I have served a copy of the above and foregoing on counsel for all parties by:

_____ Facsimile transmission to the following:

_____ Hand delivery to the following:

_____ Placing a copy in the United States Mail, properly addressed and first-class postage prepaid to the following:

e_____ Using the Electronic Filing system that will send notification of such to the following:

Roger K. Fuston
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Attorney for: Plaintiff Jennifer Anderson



OF COUNSEL